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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE:** B-201358

**DATE:** August 24, 1981

**MATTER OF:** Isidro R. Yatar

- DIGEST:**
1. Navy employee who was hired locally, in Guam, was erroneously granted home leave. Upon employee's retirement, Navy reconstructed annual leave account and charged employee's account with number of days of home leave taken. Employee is entitled to waiver of home leave erroneously granted and used. Annual leave account is reccredited with number of days charged to it for home leave.
  2. Due to administrative error, employee was led to believe he was entitled to carry over 45 days of annual leave as opposed to 30 days. Employee carried over more than 30 days' leave in several years prior to his retirement. Pursuant to 5 U.S.C. § 6304(d)(1)(A) annual leave in excess of the 30 days may be restored and the employee may be paid for all annual leave accrued as of date of retirement. That section provides for restoration of annual leave forfeited because it is in excess of the maximum carryover when the forfeiture is due to administrative error.

This is in response to a request from the Acting Comptroller, Department of the Navy, for an advance decision on the propriety of an additional payment to Mr. Isidro R. Yatar for the lump sum due for annual leave upon retirement.

Mr. Yatar was employed by the Navy, in Guam, on January 18, 1954. Based on the recommendation of the Master Mechanic, Transportation Department, Public Works Center, Guam, the Navy executed an employment agreement with Mr. Yatar on July 20, 1954. This agreement was for use in recruiting United States residents at naval activities outside the continental United States. Mr. Yatar designated his actual place of residence as Honolulu, Hawaii, on the agreement. The agreement provides, among other things, for Mr. Yatar's transportation to the United States at Government expense.

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In 1962 the Navy conducted a survey to determine which employees serving under employment agreements were eligible for home leave. Mr. Yatar's records reflected the fact that he came to Guam at his own expense and was employed locally by the Navy. Therefore, the Navy concluded he did not meet the eligibility criteria for 45 days' accumulation of annual leave, home leave, or travel leave. The record includes copies of two memoranda which the Navy alleges it sent to Mr. Yatar in 1962 explaining his nonentitlement to 45 days' accumulation of leave and home leave, and requesting that he use his accumulated leave in excess of 30 days by January 5, 1963.

Although this information was forwarded to the Guam payroll branch, Mr. Yatar's available leave records continued to show that he was eligible to carry over 360 hours (45 days) of annual leave each year, except for 1971 when it appears that 14 hours of leave in excess of 240 hours (30 days) were forfeited at the end of the leave year. Furthermore, Mr. Yatar took home leave for 40 days in 1970 and for 11 days in late 1973 or 1974 but no timecards are available for 1970 or 1974 to verify the exact dates of any home leave taken.

Mr. Yatar retired from Government service effective August 22, 1980. In accordance with his leave statement Mr. Yatar had 459 hours of annual leave available as of his retirement date. However, since this figure reflects a 45-day leave carryover and entitlement to home leave, the Navy recalculated his leave balance by charging his home and travel leave (a total of 41 days) against his annual leave in 1970 and recomputing his leave each year on the basis of a 30-day carryover. The Navy disregarded the 11 days of home leave taken in 1973-1974 since records are not available to verify that period. Thus, upon retirement, Mr. Yatar was given a lump-sum payment for 145 hours of annual leave.

Mr. Yatar contends that he is entitled to payment for the remaining 314 hours of annual leave. He states he never received the memoranda allegedly issued in 1962 explaining that he was not entitled to a 45-day leave carryover and home leave. In addition, he claims that he would not have taken home leave in 1970 if he had known he were not entitled to it. Mr. Yatar assumed that his leave records were properly maintained and that he would receive a lump-sum payment for 459 hours of annual leave.

B-201358

The Navy's submission notes that in recent years Mr. Yatar was informed that he would forfeit annual leave at the end of the leave year if he did not use some of it. Mr. Yatar concedes that he was so informed; however, his leave records still showed entitlement to a 45-day carryover.

Section 5584 of title 5, United States Code (1976), provides that a claim of the United States against a person arising out of an erroneous payment of pay or allowances may be waived in whole or in part by the Comptroller General of the United States or the head of the agency. We have previously held that the term "pay" includes home leave; therefore, an erroneous grant of home leave is subject to consideration for waiver. 56 Comp. Gen. 824, 828 (1977). Furthermore, we have held that an erroneous grant of home leave may be waived regardless of the fact that an employee has outstanding annual leave which might be used to offset all or a part of the home leave used. 56 Comp. Gen. 824, above.

The criteria for determining whether waiver is granted are when collection "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584(a). The implementing regulation at 4 C.F.R. § 91.5(c) (1980) states, in part, that:

"\* \* \* Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee \* \* \*."

The grant of home leave to Mr. Yatar occurred through administrative error, and we find no indication of fraud, misrepresentation, fault or lack of good faith on Mr. Yatar's part. Accordingly, we waive the indebtedness created by the unauthorized grant of home leave and use thereof by Mr. Yatar.

As discussed above, Mr. Yatar was a local hire since he was in Guam at the time of his employment. Thus, pursuant to 5 U.S.C. § 6304(a), he was entitled only to a 30-day accumulation of annual leave. See also, 53 Comp. Gen. 966 (1974). Any excess leave at the beginning of the first full

B-201358

biweekly pay period occurring in a leave year will be forfeited. Mr. Yatar's available leave records show that there are 5 years, 1973 and 1976 through 1979, in which he carried over more than 30 days of annual leave. Although Mr. Yatar accumulated more than 30 days' leave in 1971 the Navy correctly carried over only the 30-day statutory maximum that year.

Under 5 U.S.C. § 6304(d)(1)(A), annual leave forfeited because of administrative error may be restored. What constitutes an administrative error under section 6304(d)(1)(A) in a particular case is a matter for which primary jurisdiction lies with the agency involved. 55 Comp. Gen. 784 (1976); B-187055, March 4, 1977. The Navy erred when it executed an employment agreement with Mr. Yatar in 1954, shortly after he was hired. As a result, Mr. Yatar was led to believe that he was entitled to a 45-day carryover of annual leave. This error was compounded when the Navy discovered the error yet continued to show excess leave entitlements on his leave record. The Navy concedes that it did so. Furthermore, the Navy states that this problem should have been resolved at an earlier date. Therefore, we conclude that these errors referred to by the Navy constitute a finding of administrative error as provided for by section 6304(d)(1)(A) entitling Mr. Yatar to restored annual leave. Accordingly, as of his retirement date Mr. Yatar was entitled to receive a lump-sum payment for 459 hours of accrued annual leave. The Navy paid him for 145 hours of that leave; thus, he is entitled to receive an additional lump-sum payment for 314 hours of annual leave.

The Navy also indicates that it has several other employees whose leave situations may be similar to Mr. Yatar's and requests guidance on how to handle those cases. As is indicated above, determinations of administrative error to restore forfeited leave under 5 U.S.C. § 6304(d)(1)(A) are primarily to be made by the agency. However, if waiver is to be granted for erroneously authorized home leave in amounts in excess of \$500, the matter should be submitted to our Claims Group for consideration. 5 U.S.C. § 5584(a) and 4 C.F.R. § 92.3 (1980).

*Milton J. Fowler*  
Acting Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

B-201358

August 24, 1981

The Honorable Antonio B. Won Pat  
House of Representatives

Dear Mr. Won Pat:

This is in reference to your previous interest in the claim of Mr. Isidro R. Yatar, a former Navy employee. Enclosed is a copy of our decision of today, B-201358, in which we have granted Mr. Yatar's request for an additional lump-sum payment due for annual leave upon his retirement.

Sincerely yours,

A handwritten signature in black ink that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States

Enclosure